



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Health Care Authority (HCA) – Public Employees' Benefits Board
Administrative Order #06-09

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose:

The purpose of amending the existing rules is to allow:

1. Retirees and their dependents that are full-benefit "dual eligible" for Medicare and Medicaid to retain their PEBB eligibility through deferred enrollment.
2. Dependents of retirees who are not full-benefit "dual eligible" to continue enrollment in PEBB health plan coverage while the retiree is in a deferred status.
3. Retirees and their dependents that become eligible for Medicare Part A, Part B, and Part D outside the PEBB open enrollment to make a plan change consistent with their Medicare enrollment period.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 182-08-198, WAC 182-12-205, and WAC 182-12-265

Suspended:

Statutory authority for adoption: RCW 41.05.160

Other authority : RCW 41.05.068

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-19-084 on September 19, 2006

Describe any changes other than editing from proposed to adopted version: There are no changes

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

November 22, 2006

NAME (TYPE OR PRINT)

Jason Siems

SIGNATURE

Jason Siems

TITLE

Rules Coordinator

CODE REVISER USE ONLY

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
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PAGE <u>06-23-165</u>	

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>3</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>3</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Board" means the public employees' benefits board established under provisions of RCW 41.05.055.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB sponsored medical insurance by a retiree or surviving dependent.

"Dependent" means a person who meets eligibility requirements set forth in WAC 182-12-260.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.

"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.

"Health carrier" has the meaning set forth at RCW 48.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and uniform dental plan.

"Health plan" or "plan" means medical and dental coverage.

"Insurance coverage" means any health plan, life or long-term disability insurance plan administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer and life insurance offered to employees on an optional basis.

"Open enrollment" means a time period designated by the

administrator during which enrollees may apply to transfer their enrollment from one health carrier to another, enroll in medical coverage if the enrollee had previously waived such coverage, or add dependents.

"PEBB plan" or "PEBB benefits" means one or more insurance coverages approved by the public employees' benefits board for eligible enrollees and their dependents.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or surviving dependent who has been designated by the HCA as the individual to whom the HCA and the health carrier will issue all notices, information, requests and premium bills on behalf of enrolled dependents.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB sponsored health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements set forth in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-08-198 When may an enrollee change health plans?

(1) Enrollees may change health plans during the annual open enrollment. The enrollee must request the health plan change no later than the end of the open enrollment period. The new health plan's coverage will begin the first day of January after open enrollment.

(2) Enrollees may change health plans outside of the annual open enrollment period ~~((if one of the following events occur, provided the request to change))~~ under some circumstances. To make a health plan((s is made)) change, the enrollee must send a completed enrollment form (and a completed disenrollment form, if required) to the PEBB program no later than sixty days after the event occurs. The new health plan's coverage will begin the first day of the month after the PEBB program receives the form(s). These are the circumstances:

(a) ~~((The))~~ Enrollees may change health plans if they move((s)) and ((the)) their current health plan ((they are enrolled in)) is not available in their new location. If the enrollee ((fails to)) does not select a new health plan ((they)), the PEBB program will ((be)) automatically ((defaulted to)) enroll them in the Uniform Medical Plan or Uniform Dental Plan.

(b) ~~((The))~~ Enrollees may change health plans if they move((s)) and a health plan that was not available to them before is available to them in the new location. The enrollee

may only choose ~~((to enroll in the))~~ a newly available health plan.

(c) Enrollees may change health plans if a court order requires the enrollee to provide coverage for an eligible spouse, same-sex domestic partner, or child and the enrollee adds the dependent to ((the)) their coverage.

(d) ~~((The enrollee is a))~~ Seasonal employees ~~((who is))~~ whose off-season is during the annual open enrollment period~~((In this case the enrollee))~~ may select a new health plan upon their return to work.

(e) ~~((The employee retires.))~~ Employees may change health plans ~~((at the time that))~~ when they ~~((apply for))~~ enroll in PEBB((-sponsored)) retiree coverage.

(f) ~~((The))~~ Enrollee(+))s may change health plans when they become entitled to Medicare or enroll in a Medicare Part D plan.

(g) Enrollees may not change their health plan if their physician stops participation with the enrollee's health plan ((and it is determined by)) unless the PEBB appeals manager determines that a continuity of care issue exists. The PEBB appeals manager ((shall)) will use ((the following)) criteria that include but are not limited to the following in determining if a continuity of care issue((s)) exists:

(i) Active cancer treatment~~((, (i.e., chemotherapy and/or radiation)))~~; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy~~((~~

~~(g) It is determined by the PEBB appeals manager that there is a))~~; or

(vi) Language barrier ((issue (e.g., a Vietnamese speaking provider discontinues participation in a plan and no other Vietnamese speaking provider is available within the subscriber's area that is contracting with that plan and/or within the travel range of the subscriber))).

(h) ~~((The))~~ Enrollees ~~((reaches))~~ may change health plans if they reach their medical plan's lifetime maximum.

~~((3) For enrollees making a health plan change during the annual open enrollment, the plan change must be made no later than the last day of the open enrollment period and the plan change is effective the first day of January following the open enrollment.~~

~~(4) For enrollees making a health plan change outside of open enrollment, the health plan change must be made no later than sixty days after the triggering event and the plan change is effective the first day of the month following the date the change request is received by the PEBB program.)~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Board" means the public employees' benefits board established under provisions of RCW 41.05.055.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB sponsored medical coverage by a retiree or surviving dependent.

"Dependent" means a person who meets eligibility requirements set forth in WAC 182-12-260.

"Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.

"Health carrier" has the meaning set forth at RCW 43.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and the uniform dental plan.

"Health plan" or "plan" means medical and dental coverages.

"Insurance coverage" means any health plan, life, or long-term disability insurance plan administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer and life insurance offered to employees on an optional basis.

"Open enrollment" means a time period designated by the

administrator during which enrollees may apply to transfer their enrollment from one health carrier to another, enroll in medical coverage if the enrollee had previously waived such coverage or add dependents.

"PEBB plan" or "PEBB benefits" means one or more insurance coverages approved by the public employees' benefits board for eligible enrollees and their dependents.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or surviving dependent who has been designated by the HCA as the individual to whom the HCA and the health carrier will issue all notices, information, requests and premium bills on behalf of enrolled dependents.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB sponsored health plan by an employee (as set forth in WAC 182-12-115) or a dependent who meets eligibility requirements set forth in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-205 Retirees may defer enrollment in PEBB health plan coverage at or ~~((following))~~ after retirement. Except as stated in subsection (1)(c) of this section, if a retiree defers enrollment in PEBB health plan coverage, PEBB also waives coverage for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other coverage.

(1) ~~((Beginning January 1, 2001,))~~ Retirees may defer enrollment in PEBB health plan coverage at or ~~((following))~~ after retirement if ~~((they are))~~ continuously ~~((covered under))~~ enrolled in other medical coverage as stated below:

(a) Beginning January 1, 2001, retirees may defer their PEBB health plan coverage if enrolled in comprehensive employer-sponsored medical coverage as an employee or ~~((as))~~ the spouse or same-sex domestic partner of an employee ~~((or))~~.

(b) Beginning January 1, 2001, retirees may defer their PEBB health plan coverage if enrolled in medical coverage as a retiree or ~~((as))~~ the spouse or ~~((as the))~~ same-sex domestic partner of a retiree ~~((or retirement insurance from))~~ enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer their PEBB health plan coverage if enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB coverage if they meet PEBB eligibility criteria and

are not eligible for creditable coverage under a Medicaid program.

~~(2) ((If a retiree defers enrollment in PEBB health plan coverage, coverage is automatically waived for all eligible dependents.~~

~~(3) Election of retiree term life insurance coverage may not be deferred during periods of other coverage or otherwise.~~

~~(4) In order)) To defer health plan coverage, ((a)) the retiree must ((submit the appropriate)) send a completed enrollment form to the PEBB program requesting ~~((deferment of))~~ to defer coverage. The ~~((notice of deferral must be received by))~~ PEBB ~~((benefit services prior to the date))~~ program must receive the form before coverage is deferred or ((within)) no later than sixty days after the date the retiree ((is)) becomes eligible to apply for PEBB ((sponsored)) retiree benefits.~~

~~((+5))~~ (3) Retirees who defer PEBB coverage may ((reenroll)) enroll in PEBB coverage ((following the end of a deferral period under conditions listed below.)) as follows:

(a) Retirees who defer PEBB health plan coverage while enrolled in employer-sponsored medical coverage((+)) may ((reenroll)) enroll in PEBB health plan coverage by ((submitting the appropriate)) sending a completed enrollment form((+s)) and ((satisfactory evidence)) proof of continuous enrollment in comprehensive employer-sponsored coverage to the PEBB program:

(i) During an annual open enrollment period (PEBB coverage will begin the first day of January after the open enrollment period); or

(ii) No later than sixty days after ((the last day of the)) their employer-sponsored coverage ends. (PEBB coverage will begin the first day of the month after the employer-sponsored coverage ends.)

(b) Retirees who defer PEBB health plan coverage while enrolled as a retiree or dependent of a retiree in a federal retiree plan will have a one-time opportunity to reenroll in PEBB health plan coverage by ((submitting the appropriate)) sending a completed enrollment form((+s)) and ((satisfactory evidence)) proof of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During an annual open enrollment period (PEBB coverage will begin the first day of January after the open enrollment period); or

(ii) No later than sixty days after the ((date their)) federal retiree coverage ends. (PEBB coverage will begin the first day of the month after the federal retiree coverage ends.)

(c) Retirees who defer PEBB health plan ((enrollment will be effective the first day of the month following the date employer sponsored)) coverage ((or coverage under a federal retiree plan ended, except that reenrollment in PEBB insurance)) while enrolled in Medicare Parts A and B and Medicaid may enroll

in PEBB health plan coverage by sending a completed enrollment form and proof of continuous enrollment in creditable coverage to the PEBB program:

(i) During the annual open enrollment period (PEBB coverage will ~~((become effective))~~ begin the first day of January ~~((following))~~ after the open enrollment period); or

(ii) No later than sixty days after their Medicaid coverage ends (PEBB coverage will begin the first day of the month after the Medicaid coverage ends); or

(iii) No later than the end of the calendar year during which their Medicaid coverage ends if the retiree was also determined eligible under 42 USC §1395w-114 and subsequently enrolled in a Medicare Part D plan. (PEBB coverage will begin the first day of January following the end of the calendar year during which the Medicaid coverage ends.)

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-265 What options for continuing health plan coverage are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees' benefits board (PEBB) retiree coverage as a surviving dependent. An eligible surviving dependent must enroll in or defer PEBB health plan coverage no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents that lose eligibility due to the death of an eligible employee may continue health plan coverage under a retiree plan provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified same sex domestic partner may continue coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(c) If a surviving dependent of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems((7)) the dependent is not eligible to participate in PEBB retiree coverage. However, the dependent may continue health plan coverage under provisions of the federal

Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents that lose eligibility due to the death of a PEBB eligible retiree may continue health plan coverage under a retiree plan.

(a) The retiree's spouse or qualified same sex domestic partner may continue coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(c) Dependents that are waiving PEBB health plan coverage at the time of the retiree's death are eligible to enroll or defer PEBB retiree coverage. A form to enroll or defer PEBB health plan coverage must be hand-delivered or mailed to the PEBB ((benefit services)) program no later than sixty days after the retiree's death. To enroll in PEBB health plan coverage, the dependent must provide satisfactory evidence that enrollment in other health plan coverage was continuous from the most recent open enrollment period for which PEBB coverage was waived.

(3) Surviving spouses or eligible dependent children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in PEBB sponsored health plan coverage provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified same-sex domestic partner may continue health plan coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(4) ((Application for)) Surviving dependents must notify the PEBB program of their decision to enroll or defer PEBB health plan coverage ((must be made in writing on an election form approved by PEBB)) no later than sixty days after the date of death of the employee or retiree. ((Coverage is retroactive)) If PEBB coverage ended due to the ((date)) death of the employee or retiree ((insurance)), PEBB will reinstate health plan coverage ((terminated)) without a gap subject to ((the)) payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in PEBB health plan coverage ((for each full calendar month in which they maintain coverage)) under ((other employer sponsored comprehensive medical coverage)) WAC 182-12-200 and

182-12-205. ~~((Notice))~~ To notify the PEBB program of their intent to enroll or defer PEBB health plan coverage the surviving dependent must ~~((be sent in writing))~~ send a completed enrollment form to the PEBB ~~((benefit services))~~ program no later than sixty days after the date of death of the ~~((subscriber))~~ employee or retiree.

~~((5))~~ Surviving dependents that defer coverage while enrolled in an employer sponsored comprehensive medical plan must submit an application to reenroll in PEBB coverage no later than sixty days after the last day of coverage under the employer sponsored medical plan. Satisfactory evidence of continuous enrollment in an employer sponsored comprehensive medical coverage will be required by the PEBB program prior to reenrollment in a PEBB health plan.))